

LAW ENFORCEMENT OFFICER'S GUIDE

to

LABOR DISPUTES

Introduction & Overview

Our federal labor laws are primarily created by Congress and enforced by the National Labor Relations Board and the federal courts. The police do not have the duty or authority to enforce the labor laws. As in other types of disputes, however, the police have a duty to prevent violence, trespassing, and the destruction of private property. Most labor disputes are peaceful and do not require police involvement. Actions such as boycotting, leafleting, picketing, and striking do not require the attention of police under most circumstances. Police action is usually only required when private property is threatened or violence is imminent.

Police officers must always bear in mind that labor disputes are between legally equal entities. There is a delicate balance between the rights of workers and the rights of employers that is not for the police to maintain. Officers at the scene of labor disputes must remain neutral regarding the entities involved.

Although most labor disputes take place peacefully, local police are often called to the scene. This guide is for general background only, and is designed to provide police officers with an overview of the key federal labor laws and a general understanding of law enforcement's role in labor disputes.

There are also state labor laws that govern labor relations between public sector employers and their employees. While the state laws vary in many significant respects from the federal law, they contain similar concepts regarding how police officers may respond to issues raised during labor disputes. In the event that a labor dispute involves employees within a municipality in which the police officers are required to respond, we encourage law enforcement leaders to consult labor counsel.

Types of Labor Disputes

There are several types of labor disputes. The most visible and likely to require police presence is picketing. However, during collective bargaining disputes, both unions and employers may undertake other actions such as hand billing, posting of signs, and even the use of large inflatable rats or persons in costumes. Generally, such activity occurs during disputes arising from contract negotiations, attempts to get employers to recognize unions as an exclusive bargaining representative of the employees, and/or efforts to inform the public of the existence of a labor dispute. These actions can be related to ongoing strikes, boycotts, sympathy strikes, and/or lockouts.

- A “**strike**” is an organized termination or slowdown of work by employees in an effort to compel the employer to meet the employees’ demands. Strikes can take several forms, from employees walking off the job entirely, to a slowing of work to impair and decrease production. The vast majority of strikes are legal actions. While some strikes are illegal (for example, when a strike violates a no-strike clause or endangers the public health), *police cannot act to stop or otherwise interfere with a strike without a court order*. The legality of a strike is a question for the parties to resolve through the National Labor Relations Board and court system; it is not one for the police to decide. Police can only interfere when necessary to preserve peace or to enforce a specific order by an authorized court. Strikes typically involve picketing activity.
- “**Picketing**” is a demonstration by one or more persons outside a business or organization to protest that entity’s activities or policies and is designed typically to pressure the entity to meet the protesters’ demands. Although picketers may not block the entrance or exit of a building, picketing is a legal, and often an effective, way for strikers or other persons to convey their message to the broadest audience possible. Picketing can take the form of protesters walking with signs or passing out leaflets and other information to people walking by. Most picketing activity on non-private property is legal and protected by the First Amendment; picketing cannot take place on private property without the consent of the owner, except in very limited circumstances. While police may monitor picketers to prevent violence, property destruction, or trespassing, they may not impede the picketers’ ability to gather at a location and present their message to the public. Although it is beyond the scope of this handbook, it is worth noting that there are also forms of unlawful picketing activity where the message or object of the picketing is contrary to the union’s legal obligations under the National Labor Relations Act (NLRA). In all cases, however, it is up to the National Labor Relations Board and/or the courts to determine when picketing is unlawful and when it may be necessary to obtain police assistance in ending the picketing in accordance with an appropriate court order.

- A “**boycott**” is an action designed to isolate an adversary either socially or economically. It is intended to create public awareness of an issue and to encourage the public to withhold their support of an organization as a means of protest. Like picketing, boycotts are generally legally protected forms of speech. Again, police officers should not interfere unless directly ordered by a court and in accordance with the provisions of a court order.
- “**Sympathy strikes**” occur when unions that are not involved in a particular labor dispute strike to show support for the original striking union. Like the original strike, sympathy strikes must be handled by employers and unions through the National Labor Relations Board and/or the court system. Police should treat a sympathy strike like any other strike and refrain from acting unless specifically instructed by a court.
- “**Lockouts**” occur when an employer prevents workers who are striking, or threatening to strike, from entering a place of business. The legality of a lockout is determined by the National Labor Relations Board and/or the courts. Again, police should not interfere in a lockout unless necessary to prevent violence or the destruction of property or if ordered to do so in accordance with an appropriate court order. Lockouts often involve picketing or the distribution of handbills or leaflets to inform the public of the status of the dispute.



Laws Governing Labor Disputes

Federal labor laws govern nearly all aspects of employment in the United States, including the right to form or join a union; work site safety; anti-discrimination in hiring, promotion, termination, and other employment decisions; and the requirement of complying with the applicable child labor, minimum wage, and overtime laws.

U.S. Constitution

When responding to a labor dispute, police officers are bound by the limits of the Constitution, as they are in any other situation. The First Amendment protects workers' rights to free speech and free assembly. Police officers may intervene only to prevent violence, trespassing, or the destruction of private property.

National Labor Relations Act

The National Labor Relations Act of 1935 (NLRA) is the principal law governing private labor management. Police do not enforce the NLRA. The NLRA gives private employees the right to form unions and engage in collective bargaining (or to refrain from such activity); sets forth a national labor policy favoring collective bargaining; establishes the National Labor Relations Board (NLRB) to address labor disputes; and prohibits certain conduct by employers as unfair labor practices. This law applies to all industries affecting interstate commerce.

Other Federal Laws

The Railway Labor Act of 1926 was the first major legislation to protect the rights of workers to form unions and collectively bargain. The Labor Management Relations Act of 1947 expanded the list of unfair labor practices originally set out in the NLRA. The Labor Management Reporting and Disclosure Act, passed in 1959, focused on the relationship between unions and members. This law also created financial guidelines and reporting systems for unions, employers, and the Department of Labor.



Other federal laws govern workers' rights that are not directly related to the right to collectively bargain. These laws include, among others, the Fair Labor Standards Act; the Occupational Safety and Health Act (OSHA); Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Equal Pay Act; the Americans with Disabilities Act; and the Family and Medical Leave Act.

The following page is a brief general overview of the conduct that the NLRA allows and prohibits. This information is provided for general background only.

ACTIONS THAT ARE PROTECTED BY THE NLRA

- Strikes in response to unfair labor practices by the employer.
- Strikes motivated by economic issues that do not include unfair practices.
- “Sympathy Strikes” by unions in support of strikers or other employees, which typically involve a refusal to cross picket lines established by other affiliated or supported unions.
- “Area-Standards Picketing” against non-union employers who pay less than union wage scales.
- “Informational Picketing” designed to appeal to the public without significantly interfering with the performance of services by other employees who are neutral to the dispute.
- “Lockouts” initiated by the employer when negotiations have stopped or reached an impasse.
- “Recognitional Picketing” in an effort, under some circumstances, to force an employer to accept a union. This is a highly regulated and complicated area of labor law and is generally not used by contemporary unions.

ACTIONS THAT ARE PROHIBITED BY THE NLRA

- Picket line violence, assaults, or malicious destruction of property.
- Strikes when there is a no-strike clause in the work contract.
- Taking possession of or interfering with the employer’s property.
- Mass picketing that deters employees from leaving or entering the work area.
- Lockouts intended to avoid union organization or to force workers to accept a particular union.
- Picketing or leafleting on private property without the owner’s consent, except in rare cases such as some facilities that are open to the public.

Illinois Laws

In addition to the federal labor laws summarized above, there also are state labor laws that govern labor relations between public employers and their employees.

- The **Illinois State Labor Relations Act** (ISLRA) provides public employees the right to form and join unions, and addresses many of the same issues as the NLRA. The employment relationship between public employers and their employees is not governed by the NLRA; likewise, private employers are generally not subject to the jurisdiction of the ISLRA in the absence of some joint employer relationship with a public entity. While the NLRA and the ISLRA are similar in many respects, there are many significant variations in these laws and police departments are encouraged to consult with counsel in the event that a labor dispute arises in a municipality involving public employees and police officers are called or expected to respond when strike or picketing activity is involved.

Additionally, Illinois laws govern the form and frequency of payment of wages, including the types of payroll deductions allowed (or disallowed), and set mandatory rest periods (for example, one day off required per week, 20-minute lunch breaks required for 7 hours of work, etc., for covered, non-exempt employees). Finally, Illinois law also regulates unemployment compensation and workers' compensation.

- The **Illinois Human Rights Act** provides an avenue for covered employees to pursue claims of discrimination with respect to hiring, promotion, discharge, and other employment decisions. There are also many local ordinances (such as the Chicago and Cook County Human Rights Ordinances) that provide additional protections against employment discrimination for covered employees. These state laws supplement and are in addition to the protections already in effect through the federal laws summarized above.

- The **Illinois Public Labor Relations Act** recognizes workers' rights to collectively bargain and supports the unionization of public employees. 5 ILCS 315 (2002). Under the ISLRA, public employees are only barred from striking where there is a "clear and present danger to the public." 5 ILCS 315/18(a) (2002). As with all strikes, the Illinois Labor Relations Board and the courts—not the police—determine the legality of a strike by public employees and the need (if any) for interference or action by local law enforcement personnel.



- The **Illinois Public Demonstrations Law** (430 ILCS 70/1 et seq.) applies to all public gatherings, including labor demonstrations. However, as labor disputes are particularly sensitive situations, individual officers should confer with their supervisors before acting.

Appropriate Behavior, Options, & Precautions

Police Behavior

Because tensions can escalate during labor disputes, violence or property damage can sometimes occur. The presence of police officers at a labor dispute is primarily intended to deter possible violence and property destruction.

Police officers should not side with either party in a labor dispute. Instead, police must remain neutral when responding to a problem involving a labor dispute. When police actions are perceived as favoring one party, negotiations can break down. As a consequence, a single officer's actions can unintentionally do more harm than good. Therefore, officers should use restraint and act cautiously when responding to a labor dispute. Of course, police should never hesitate to act where violence or property destruction appears imminent or occurs.

Police Options

The options available to the police are limited. As noted above, the police are not responsible for enforcing the labor laws. The police are responsible for monitoring the potential for violence, assisting in stopping outbreaks of violence, preventing destruction of property, and protecting public safety, including the right of reasonable passage and the right to demonstrate peacefully.

Police Precautions

1. As always, do not allow yourself to be provoked or to act emotionally.
2. Obtain sufficient, reliable information before acting.
3. Consider the source of information when dealing with parties to labor disputes. Because these disputes are actually conflicts between private parties, the possibility of bias and a desire to use the police to obtain an unfair advantage must always be considered.
4. As a general rule, do not take directions from either employers or employees regarding whether or whom to arrest, whether to disperse employees, or how to enforce a court order. Officers at the scene should only take direction from police supervisors.
5. Be aware that arrest and incident reports are often subpoenaed by the National Labor Relations Board to use in resolving unfair labor practice disputes. Reports must be accurate and impartial; the officer must avoid adopting the biases of the parties involved in the disputes.
6. Court orders often issued in labor disputes include temporary restraining orders (TROs), preliminary injunctions (PIs), and cease and desist orders. Police should not enforce a court order for the employer, the union, or the National Labor Relations Board unless the order is directed specifically to the police. In most instances, if the employees fail to comply with an order, the employer must go back to court and seek a contempt of court order.

Typical Problem Situations in Labor Disputes

- **Second Gates:** In some cases, employers may establish a separate entrance for non-striking employees, referred to as a “reserved gate.” Labor actions taking place at the main gate are generally legal, while conducting actions at the reserved gate for non-striking employees and others may be illegal. Nonetheless, the officers’ responsibilities remain the same: to enforce the law by preventing violence, property damage, or trespassing without aggravating or interfering with the situation. Again, refusal to respect a second/reserved gate is usually a matter for the federal and state labor boards and the courts, not for the police.
- **Secondary Employers’ Premises:** Labor activity at “secondary sites” (i.e., sites other than the location involved in the dispute) is generally considered illegal under the NLRA. But the determination of the lawfulness of the activity, in the absence of violence or flagrant trespassing, is for the NLRB or the courts.
- **Trespassing:** Violations may exist if public access is limited by the labor activity, but the police should not unreasonably restrict peaceful picketing or hand billing even if some find it inconvenient. The fact that property is privately owned (e.g., a shopping mall) does not automatically make that property private and subject to the owner’s unrestricted control when a labor dispute is involved. There are specific and unique laws that govern picketing and hand billing in areas that are open to the general public.
- **Videotaping:** Videotaping by employers, employees, or the media may be an annoyance at times but is generally allowed provided there is no listening device involved. There are some limitations on the right to record events and conversations where an employee or other individual has refused to consent to the recording of the incident. Police officers should maintain composure, especially as these tapes can document that no excessive force or wrongful police conduct or interference occurred. Only when an individual’s use of a camera is physically interfering with the police should action be taken against the photographer. Such action must be limited to stopping the interference and, if necessary, reasonably preventing its recurrence.
- **Additional Legal Considerations:** The Illinois Prevailing Wage Act and the federal Davis-Bacon Act specify the wage rates for employees on federal and/or state funded construction projects. A number of not-for-profit organizations actively seek compliance with and enforcement of these laws by monitoring projects, speaking to employees, and reporting to the Illinois and U.S. Departments of Labor any payment violations by the construction employers. Labor and employment disputes may arise when an enforcement group is monitoring a publicly funded construction project to assess compliance with the laws.

In situations involving such monitoring action by these organizations, construction employers have been known to summon police assistance to have monitors removed from the area. However, as long as monitors are not actively harassing the employer or his or her employees and do not criminally trespass on any property, they have the legal right to monitor the projects.

Again, police officers must remain neutral when responding to these situations and simply assess if there has been any violation of the law. Police officers must not unlawfully infringe upon any individual's civil liberties, including the right to remain on public property for lawful purposes. Police officers are not responsible for assessing the allegations that a monitoring agent may make about a construction employer. Police officers shall respond to these situations, make an assessment of the conduct of both parties to determine whether any violations of the law are occurring, and advise both parties of that assessment.



Closing

The primary purpose of police presence at labor disputes is to calm tensions and prevent violence or the destruction of property. As in all situations, police officers must act to prevent physical injury and property damage. But when it does not appear that property damage or violence is imminent, officers should be hesitant to act. When dealing with a peaceful labor dispute, police officers should always confirm with their superiors before taking any action and police departments should consult counsel if there is any question about whether to intervene in a labor dispute. Most peaceful labor disputes are legal and will be resolved by the parties involved at the bargaining table or in court, not by police.



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